



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Group Art Unit: 3762

Docket No.: 1023-287US01

Title: MEDICAL DEVICE PROGRAMMER WITH SELECTIVE
DISABLEMENT OF DISPLAY DURING TELEMETRY

DECLARATION UNDER 37 C.F.R. 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

We, Alex C. Toy and John W. Forsberg, declare as follows:

1. We are named inventors in above-referenced Patent Application Serial No. 10/693,008.
2. We are employees of Medtronic, Inc., the Assignee of record for the present application.
3. The above-referenced Patent Application Serial No. 10/693,008 claims priority to Provisional Patent Application Serial No. 60/508,511 filed October 2, 2003.

4. More than one year prior to October 2, 2003, Medtronic, Inc. requested that Benchmark Electronics, Inc. manufacture 222 programmers for a medical device pursuant to assembly drawings shown in Exhibit A. Exhibit A is a two-page document assigned document number 502814 and relates to a programmer with model number 37741 ("Model 37741 programmer"). On sheet 1, Exhibit A illustrates an assembly view of a Model 37741 programmer for a medical device. On sheet 2, Exhibit A illustrates an assembled view of a Model 37741 programmer for a medical device. Medtronic Inc. confidential and proprietary information has been redacted from Exhibit A.

5. More than one year prior to October 2, 2003, Benchmark Electronics, Inc. manufactured 222 Model 37741 programmers pursuant to the request from Medtronic, Inc.

6. At least 89 of the 222 Model 37741 programmers manufactured by Benchmark Electronics, Inc. more than one year prior to October 2, 2003 were used for experimental purposes, as evidenced by Exhibits B-D. Exhibit B is a forty-nine page document assigned document number 288117-70205 and entitled, "Neuro Patient Programmer Platform Electrical DVT Report." Exhibit C is a one page screen print of an internal electronic document storage and retrieval system at Medtronic, Inc., which indicates that document number 288117-70205 (Exhibit B) was modified on October 7, 2002 and June 28, 2003. Exhibit D is a twenty-nine page document entitled, "DVT Test Data for 288117-70020," and summarizes the results of tests conducted in May 2002 and June 2002. Medtronic Inc. confidential and proprietary information has been redacted from Exhibits B and D.

7. The remainder of the 222 Model 37741 programmers manufactured by Benchmark Electronics, Inc. more than one year prior to October 2, 2003 were not used for the tests reflected in Exhibits B and D and were used internally by Medtronic, Inc. employees for development purposes.

8. In view of this Declaration and the content of Exhibits A-D, it is clear that the 222 Model 37741 programmers manufactured by Benchmark Electronics, Inc. were not "in public use

or on sale in this country, more than one year prior to the date of application for patent in the United States” under 35 U.S.C. § 102(b).

We hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: Oct. 4, 2006 Signed: Alex C. Toy
Alex C. Toy

Date: Oct 4, 2006 Signed: John W. Forsberg
John W. Forsberg